

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EVDOKIA NIKOLOVA,
Plaintiff,

v.

UNIVERSITY OF TEXAS AT AUSTIN,
Defendant.

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Civil Action No.: 1:19-CV-00877

**DEFENDANT’S SECOND UNOPPOSED MOTION FOR EXTENSION OF TIME
TO RESPOND TO PLAINTIFF’S MOTION FOR JUDGMENT**

TO THE HONORABLE JUDGE ROBERT PITMAN:

Defendant The University of Texas at Austin (“Defendant”) respectfully requests an extension to its deadline to respond to Plaintiff’s Motion for Judgment, which is presently set for June 13, 2022. Defendant was preparing to meet the current deadline when its attorney-in-charge became ill with the coronavirus. It is by reason of this illness that Defendant seeks this extension. Defendant’s motion is unopposed.

STANDARD OF REVIEW

“When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion if . . . a request is made before[] the original time or its extension expires.”¹ The good cause standard requires “the party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.”² “Rule 6(b)(1)(A) gives the court wide discretion to grant a request for additional time that is made

¹ FED. R. CIV. P. 6(b)(1); *see also* FED. R. CIV. P. 16(b)(4) (applying the same good cause standard for modifications to a schedule).

² *S & W Enters., L.L.C. v. Southtrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003).

prior to the expiration of the period originally prescribed or prior to the expiration of the period as extended by a previous order.”³ “[A]n application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.”⁴

VERIFIED FACTS

On June 6, 2022, Defendant’s attorney-in-charge Benjamin L. Dower began experiencing symptoms of the coronavirus, which is also commonly known as COVID-19. On June 7, 2022, Defendant’s attorney-in-charge tested positive for COVID-19, using both an antigen (rapid) test and a molecular (PCR) test. Defendant’s attorney-in-charge is presently experiencing COVID-19 symptoms that negatively affect the clarity and quality of his legal work, as well as energy levels required to produce that work.

I declare under penalty of perjury that the foregoing Verified Facts are true and correct.
Executed on June 8, 2022.

/s/ Benjamin L. Dower
BENJAMIN L. DOWER
Deputy Chief for the General Litigation Division

ARGUMENTS & AUTHORITIES

Based on the verified facts recounted above, Defendant respectfully asks for a one-week extension for its response to Plaintiff’s Motion for Judgment. Defendant has exercised due diligence in responding to the pending motion, but the effect of the COVID-19 virus on Defendant’s attorney-in-charge is preventing the current deadline from being met.⁵ According to

³ Charles Alan Wright & Arthur R. Miller, 4B Fed. Prac. & Proc. Civ. § 1165 (4th ed. April 2017).

⁴ *Id.*

⁵ Since Defendant filed its Motion for Extension on May 6, 2022 (Dkt. #100), undersigned’s co-counsel has been consumed with preparing a motion for summary judgment in *Leykum v. University*

the Senior Director of Infection Prevention for the Johns Hopkins Health System, “once symptoms appear,” the patient may experience “fever, cough, and other COVID-19 symptoms,” which “can last one to two weeks if [the patient] ha[s] a mild or moderate coronavirus disease.”⁶ Here, an additional extension of one week will not prejudice the Parties. Defendant seeks the extension, not for purposes of delay, but so that justice might be done.

PRAYER

Defendant respectfully submits that the circumstances described in this motion constitute good cause. As such, Defendant respectfully asks the Court to extend the deadline for its response to Plaintiff’s Motion for Judgment to Monday, June 20, 2022. Plaintiff’s Counsel is unopposed to this request.

of Texas Health Science Center at San Antonio, cause no. 5:20-cv-00478 (pending in the United States District Court for the Western District of Texas), drafting Reply Briefs and a Response Brief in *Heidi Group v. Texas Health & Human Services Comm’n*, cause no. 1:22-cv-00294 (pending in the United States District Court for the Western District of Texas), working on discovery matters in *Green v. Texas A&M University System*, cause no. 4:20-cv-00446 (pending in the United States District Court for the Southern District of Texas), and preparing a Reply in Support of Motion for Summary Judgment in *State of Texas, et al. v. Biden, et al.*, cause no. 5:21-cv-300 (pending in the United States District Court for the Northern District of Texas).

⁶ Lisa Maragakis, M.D., M.P.H., *Coronavirus Diagnosis: What Should I Expect?*, John Hopkins Medicine, last updated January 24, 2022, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/diagnosed-with-covid-19-what-to-expect> (last accessed June 8, 2022).

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that on Tuesday, June 7th, 2022, I sent an email to Counsel for Plaintiff Evdokia Nikolova requesting their opposition status to this motion. Plaintiff's Counsel indicated that they are unopposed to this motion.

/s/ Benjamin L. Dower

BENJAMIN L. DOWER

Deputy Chief for the General Litigation Division

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2022, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Benjamin L. Dower

BENJAMIN L. DOWER

Deputy Chief for the General Litigation Division